

After reviewing the record compiled to date, the Board finds:

1. Mr. Perkins fell and injured himself while working for Burger King on March 1, 1999. He immediately reported the accident and Burger King referred him for medical treatment. The Board finds that the accident arose out of and in the course of Mr. Perkins' employment with Burger King.
2. Mr. Perkins testified about the medical treatment that he had received and that a doctor had recently given him another slip taking him off work.
3. For preliminary hearing purposes, Judge Avery determined that Mr. Perkins was entitled to receive temporary total disability benefits for the period commencing April 10, 1999.

#### CONCLUSIONS OF LAW

1. The appeal should be dismissed.
2. This is an appeal from a preliminary hearing Order. The Board's jurisdiction to review preliminary hearing findings is limited to the following issues, which are deemed jurisdictional.<sup>1</sup>
  - (1) Did the worker sustain an accidental injury?
  - (2) Did the injury arise out of and in the course of employment?
  - (3) Did the worker provide both timely notice and written claim for the accidental injury?
  - (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction or authority.<sup>2</sup>

3. Burger King and its insurance carrier request the Appeals Board to find that Mr. Perkins is not entitled to receive the temporary total disability benefits that Judge Avery ordered paid.
4. Because of the limits placed on its jurisdiction to review preliminary hearing findings, at this juncture of the proceeding the Appeals Board does not have the authority to reweigh the evidence and redetermine if Mr. Perkins is temporarily and totally disabled.

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<sup>1</sup> K.S.A. 1999 Supp. 44-534a.

<sup>2</sup> K.S.A. 1999 Supp. 44-551.

**WHEREFORE**, the Appeals Board dismisses the appeal leaving Judge Avery's May 28, 1999 Order in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1999.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
James B. Biggs, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director